

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

VONDELLE M. OVER,

Plaintiff,

v.

Case No. 24-cv-578-bhl

WAUPUN CORRECTIONAL INSTITUTION, et al,

Defendants.

SCREENING ORDER

Plaintiff Vondelle Over, who is currently serving a state prison sentence at the Waupun Correctional Institution and representing himself, filed a complaint under 42 U.S.C. §1983, alleging that his civil rights were violated. This matter comes before the Court on Over's motion for leave to proceed without prepayment of the filing fee and to screen the complaint.

MOTION FOR LEAVE TO PROCEED WITHOUT PREPAYMENT OF THE FILING FEE

Over has requested leave to proceed without prepaying the full filing fee (*in forma pauperis*). A prisoner plaintiff proceeding *in forma pauperis* is required to pay the full amount of the \$350.00 filing fee over time. *See* 28 U.S.C. §1915(b)(1). Over has filed a certified copy of his prison trust account statement for the six-month period immediately preceding the filing of his complaint, as required under 28 U.S.C. §1915(a)(2), and has been assessed and paid an initial partial filing fee of \$2.79. The Court will grant Over's motion for leave to proceed without prepaying the filing fee.

SCREENING OF THE COMPLAINT

The Court has a duty to review any complaint in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity, and dismiss any complaint

or portion thereof if the prisoner has raised any claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. §1915A(b). In screening a complaint, the Court must determine whether the complaint complies with the Federal Rules of Civil Procedure and states at least plausible claims for which relief may be granted. To state a cognizable claim under the federal notice pleading system, a plaintiff is required to provide a “short and plain statement of the claim showing that [he] is entitled to relief.” Fed. R. Civ. P. 8(a)(2). It must be at least sufficient to provide notice to each defendant of what he or she is accused of doing, as well as when and where the alleged actions or inactions occurred, and the nature and extent of any damage or injury the actions or inactions caused.

“The pleading standard Rule 8 announces does not require ‘detailed factual allegations,’ but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “The tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* A complaint must contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 556. “[T]he complaint’s allegations must be enough to raise a right to relief above the speculative level.” *Id.* at 555 (internal quotations omitted).

ALLEGATIONS OF THE COMPLAINT

Over is an inmate at the Waupun Correctional Institution, who has had chronic right leg and left arm pain since he arrived at the institution in August 2019. Dkt. No. 1 at 2. Over alleges that he has filed multiple health service requests to address his excruciating and debilitating pain,

but Defendants Dr. English, Ashley Haseau, and Dr. Sukowati have not taken them seriously or have outright ignored them. *Id.* According to Over, Dr. English, Haseau, and Dr. Sukowati have continued ordering prescription medication that does not work, even though Over has identified several other prescription medications used in the past that do manage his chronic pain. *Id.* at 2-3. Over states that he has been in pain “daily and nightly” for over five years. *Id.* at 3. For relief, he seeks monetary damages. *Id.* at 5.

THE COURT’S ANALYSIS

“To state a claim for relief under 42 U.S.C. §1983, a plaintiff must allege that he or she was deprived of a right secured by the Constitution or the laws of the United States, and that this deprivation occurred at the hands of a person or persons acting under the color of state law.” *D.S. v. E. Porter Cty. Sch. Corp.*, 799 F.3d 793, 798 (7th Cir. 2015) (citing *Buchanan–Moore v. Cty. of Milwaukee*, 570 F.3d 824, 827 (7th Cir. 2009)).

To state a claim under the Eighth Amendment, Over must allege that: (1) he had an objectively serious medical condition; and (2) the defendant was deliberately indifferent towards it. *Duckworth v. Ahmad*, 532 F.3d 675, 679 (7th Cir. 2008). A medical condition does not need to be life-threatening to be serious; it needs only to be “a condition that would result in further significant injury or unnecessary and wanton infliction of pain” if not addressed. *Gayton v. McCoy*, 593 F.3d 610, 620 (7th Cir. 2010). A defendant is deliberately indifferent when he “actually knew of and disregarded a substantial risk of harm.” *Petties v. Carter*, 836 F.3d 722, 728 (7th Cir. 2016). Examples of deliberate indifference include ignoring a request for medical assistance; refusing to take instructions from a specialist; persisting in a course of treatment known to be ineffective; choosing an easier and less efficacious treatment without exercising medical judgment; and delaying in treatment which serves no penological interest. *Id.* at 729-31.

Over alleges that he has chronic right leg and left arm pain, which is an objectively serious medical condition. *Gonzalez v. Feinerman*, 663 F.3d 311, 314 (7th Cir. 2011) (“[Plaintiff’s

chronic pain presents a separate objectively serious condition.”). Over additionally alleges that Dr. English, Haseau, and Dr. Sukowati have persisted in a course of treatment (prescription medication) known to be ineffective for over five years. Over states that he is in excruciating and debilitating pain all day and night. Based on these allegations, the Court can reasonably infer that Dr. English, Haseau, and Dr. Sukowati may have been deliberately indifferent towards Over’s chronic pain. Accordingly, Over may proceed on an Eighth Amendment deliberate indifference claim in connection with allegations that Dr. English, Haseau, and Dr. Sukowati have failed to provide adequate medical care for his chronic pain since August 2019. The Court will dismiss the Waupun Correctional Institution from the case because it is a building, not a “person” capable of being sued under §1983. *See Smith v. Knox Cty. Jail*, 666 F.3d 1037, 1040 (7th Cir. 2012).

CONCLUSION

The Court finds that Over may proceed on an Eighth Amendment deliberate indifference claim in connection with allegations that that Dr. English, Haseau, and Dr. Sukowati have failed to provide adequate medical care for his chronic pain since August 2019.

IT IS THEREFORE ORDERED that Over’s motion for leave to proceed without prepayment of the filing fee (Dkt. No. 2) is **GRANTED**.

IT IS FURTHER ORDERED that the Waupun Correctional Institution is **DISMISSED** from this case.

IT IS FURTHER ORDERED that pursuant to an informal service agreement between the Wisconsin Department of Justice and this Court, copies of Over’s complaint and this order are being electronically sent today to the Wisconsin Department of Justice for service on Dr. English, Haseau, and Dr. Sukowati

IT IS FURTHER ORDERED that, pursuant to the informal service agreement between the Wisconsin Department of Justice and this Court, Dr. English, Haseau, and Dr. Sukowati shall

file a responsive pleading to the complaint within **sixty days** of receiving electronic notice of this order.

IT IS FURTHER ORDERED that the agency having custody of Over shall collect from his institution trust account the **\$347.21** balance of the filing fee by collecting monthly payments from Over's prison trust account in an amount equal to 20% of the preceding month's income credited to the prisoner's trust account and forwarding payments to the Clerk of Court each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. §1915(b)(2). The payments shall be clearly identified by the case name and number assigned to this action. If Over is transferred to another institution, the transferring institution shall forward a copy of this Order along with Over's remaining balance to the receiving institution.

IT IS FURTHER ORDERED that a copy of this order be sent to the officer in charge of the agency where Over is confined.

IT IS FURTHER ORDERED that the parties may not begin discovery until after the Court enters a scheduling order setting deadlines for discovery and dispositive motions.

IT IS FURTHER ORDERED that plaintiffs who are inmates at Prisoner E-Filing Program institutions must submit all correspondence and case filings to institution staff, who will scan and e-mail documents to the Court. The Prisoner E-Filing Program is mandatory for all inmates of Green Bay Correctional Institution, Waupun Correctional Institution, Dodge Correctional Institution, Wisconsin Secure Program Facility, Columbia Correctional Institution, and Oshkosh Correctional Institution. Plaintiffs who are inmates at all other prison facilities must submit the original document for filing to the Court to the following address:

Office of the Clerk
United States District Court
Eastern District of Wisconsin
362 United States Courthouse
517 E. Wisconsin Avenue
Milwaukee, Wisconsin 53202

PLEASE DO NOT MAIL ANYTHING DIRECTLY TO THE COURT’S CHAMBERS. It will only delay the processing of the matter.

Over is further advised that failure to make a timely submission may result in the dismissal of this action for failure to prosecute. In addition, the parties must notify the Clerk of Court of any change of address. Failure to do so could result in orders or other information not being timely delivered, thus affecting the legal rights of the parties.

Enclosed is a guide prepared by court staff to address common questions that arise in cases filed by prisoners. Entitled “Answers to Prisoner Litigants’ Common Questions,” this guide contains information that Over may find useful in prosecuting this case.

Dated at Milwaukee, Wisconsin on July 10, 2024.

s/ Brett H. Ludwig

BRETT H. LUDWIG

United States District Judge